

Federal Communications Commission

DA 99-629

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Judsonia, Arkansas)	)	MM Docket No. 99-98
	)	RM-9483
)	
(Kensett, Arkansas)	)	MM Docket No. 99-99
	)	RM-9484
)	
(Somerton, Arizona)	)	MM Docket No. 99-100
	)	RM-9491
)	
(Augusta, Kansas)	)	MM Docket No. 99-101
	)	RM-9494
)	
(Wellton, Arizona)	)	MM Docket No. 99-102
	)	RM-9495
)	
(Bayfield, Colorado)	)	MM Docket No. 99-103
	)	RM-9506
)	
(Beulah, Colorado)	)	MM Docket No. 99-104 ✓
	)	RM-9507
)	
(Center, Colorado)	)	MM Docket No. 99-105
	)	RM-9508
)	
(La Jara, Colorado)	)	MM Docket No. 99-106
	)	RM-9509
)	
(La Veta, Colorado))	MM Docket No. 99-107
)	RM-9510
)	
(Sawpit, Colorado))	MM Docket No. 99-108
)	RM-9511
)	

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FCC MAIL SECTION

(Walsenburg, Colorado))	MM Docket No. 99-109
)	RM-9512
)	
(Westcliffe, Colorado))	MM Docket No. 99-110
	)	RM-9513
)	
(Taft, California)	)	MM Docket No. 99-111
	)	RM-9539
)	
(Thermal, California)	)	MM Docket No. 99-112
	)	RM-9540
)	
(Cimarron, Kansas)	)	MM Docket No. 99-113
	)	RM-9544

NOTICE OF PROPOSED RULE MAKING

Adopted: March 24, 1999

Released: April 2, 1999

Comment Date: May 24, 1999

Reply Comment Date: June 8, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

1. MM Docket No. 99-98; RM-9483**Petitioner:** White County Broadcasters

c/o John F. Garziglia, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W.
Suite 200
Washington, DC 20006

Proposal: Allot Channel 237A to Judsonia, Arkansas, as the community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Judsonia, Arkansas	--	237A

Coordinates: 35-17-06 NL; 91-37-45 WL.

Additional Information: The proposed allotment requires a site restriction 1.5 kilometers (.96 miles) northeast to avoid a short-spacing to the licensed site of Station KSSN(FM), Channel 239C, Little Rock, Arkansas, at coordinates 34-47-57 NL; 92-29-29 WL.

FCC Contact: Nancy Joyner, (202) 418-2180.

2. MM Docket No. 99-99; RM-9484**Petitioner:** White County Broadcasters

c/o John F. Garziglia, Esq.
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, DC 20006

Proposal: Allot Channel 289A to Kensett, Arkansas, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Kensett, Arkansas	--	289A

Coordinates: 39-14-00 NL; 91-39-54 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner (202) 418-2180.

3. MM Docket No. 99-100; RM-9491

Petitioner: L. Topaz Enterprises, Inc.

c/o Dale A. Ganske, President
3325 Conservancy Lane
Middleton, WI 53562

Proposal: Allot Channel 260C3 to Somerton, Arizona, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Somerton, Arizona	--	260C3

Coordinates: 32-35-00 NL; 114-35-05 WL

Additional Information: The proposed allotment requires a site restriction 11.8 kilometers (7.4 miles) east to avoid a short-spacing to the licensed site of Station KGBA(FM), Channel 261A, Holtville, California, at coordinates 32-48-10 NL; 115-29-53 WL; as well as to the site specified in the construction permit issued to Station KGBA(FM) at coordinates 32-47-40 NL; 115-29-53 WL. As Somerton is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government to the proposed allotment of Channel 260C3 at that community will be required.

FCC Contact: Nancy Joyner, (202) 418-2180.

4. MM Docket No. 99-101; RM-9494

Petitioner: L. Topaz Enterprises, Inc.

c/o Dale A. Ganske, President
3325 Conservancy Lane
Middleton, WI 53562

Proposal: Allot Channel 263A to Augusta, Kansas, as that community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Augusta, Kansas	283C2	263A, 283C2

Coordinates: 37-41-12 NL; 96-58-30 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

5. MM Docket No. 99-102; RM-9495

Petitioner: L. Topaz Enterprises, Inc.

c/o Dale A. Ganske, President
3325 Conservancy Lane
Middleton, WI 53562

Proposal: Allot Channel 240A to Wellton, Arizona, as that community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Wellton, Arizona	283C2	240A, 283C2

Coordinates: 32-40-18 NL; 114-08-18 WL

Additional Information: As Wellton, Arizona, is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment of Channel 240A at that community will be required.

FCC Contact: Nancy Joyner, (202) 418-2180.

6. MM Docket No. 99-103; RM- 9506

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.

President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 237A to Bayfield, Colorado, as that community's first local FM allotment.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Bayfield, Colorado	--	237A

Coordinates: 37-13-32 NL; 107-35-51 WL.

Additional Information: The proposed allotment requires no site restriction. Although the petitioner has requested the allotment of Channel 237A to Bayfield as that community's first local FM transmission service, it should be noted that Channel 296C has been proposed for allotment to Bayfield in the context of MM Docket No. 99-76 (RM-9400). See Notice of Proposed Rule Making adopted March 10, 1999 (DA 99-534).

FCC Contact: Nancy Joyner, (202) 418-2180.

7. MM Docket No. 99-104; RM-9507

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 230C3 to Beulah, Colorado, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Beulah, Colorado	--	230C3

Coordinates: 37-53-23 NL; 105-01-13 WL

Additional Information: The proposed allotment requires a site restriction 20.8 kilometers (12.9 miles) south of Beulah to avoid a short-spacing to the licensed site of Station KILO(FM), Channel 232C, Colorado Springs, Colorado, at coordinates 38-44-44 NL; 104-51-43 WL. As Beulah is not incorporated nor listed in the U.S. Census, the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd, 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd, 10 FCC Rcd 9831 (1995). Petitioner is requested to provide additional information regarding the attributes of Beulah, Colorado, consistent with the above guidelines.

FCC Contact: Nancy Joyner, (202) 418-2180.

8. MM Docket No. 99-105; RM-9508

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 287A to Center, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Center, Colorado	--	287A

Coordinates: 37-45-00 NL; 106-06-24 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

9. MM Docket No. 99-106; RM-9509

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 221A to La Jara, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
La Jara, Colorado	--	221A

Coordinates: 37-16-30 NL; 105-57-35 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

10. MM Docket No. 99-107; RM-9510

Petitioner: Mountain West Broadcasting

Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 277A to La Veta, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
La Veta, Colorado	--	277A

Coordinates: 37-30-54 NL; 105-00-18 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

11. MM Docket No. 99-108; RM-9511**Petitioner:** Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009

Proposal: Allot Channel 256C3 to Sawpit, Colorado, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sawpit, Colorado	--	256C3

Coordinates: 37-59-36 NL; 108-00-12 WL

Additional Information: The proposed allotment requires no site restriction. Although Sawpit is listed in the U.S. Census and attributed therein with a population of 36 persons, we note that according to the 1990 edition of the Rand McNally Commercial Atlas and Marketing Guide ("Guide"), it receives mail through Placerville, Colorado. No other community indicia is listed in the Guide. In the absence of customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations, we may find that a population grouping of 36 persons does not constitute a bona fide community for allotment purposes. See Searles Valley, California, 3 FCC Rcd 5221 (1988); see also, Naples, Florida, 41 RR 2d 1549 (1977). Community status may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd., 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd. 10 FCC Rcd 9831 (1995). Therefore, petitioner is requested to present the Commission with specific information regarding the attributes of Sawpit, Colorado, consistent with the above guidelines..

FCC Contact: Nancy Joyner, (202) 418-2180.

12. MM Docket No. 99-109; RM-9512

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6897 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 267C3 to Walsenburg, Colorado, as that community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Walsenburg, Colorado	272C3	267C3, 272C3

Coordinates: 37-37-27 NL; 104-46-47 WL

Additional Information: The proposed allotment requires on site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

13. MM Docket No. 99-110; RM-9513

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 257A to Westcliffe, Colorado, as that community's first local commercial FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Westcliffe, Colorado	--	257A

Coordinates: 38-04-10 NL; 105-31-42 WL

Additional Information: The proposed allotment requires a site restriction 9.1 kilometers

(5.7 miles) southwest of the community to avoid a short-spacing to Station KKMGM(FM) , Channel 255C, Pueblo, Colorado, at coordinates 38-44-43 NL; 104-51-41 WL, and to Station KVUU(FM), Channel 260C, Pueblo, at coordinates 38-44-44 NL; 104-51-42 WL.

FCC Contact: Nancy Joyner, (202) 418-2180.

14. MM Docket No. 99-111; RM-9539

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 293A to Taft, California, as that community's second local FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Taft, California	280A	280A, 293A

Coordinates: 35-08-18 NL; 119-27-30 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

15. MM Docket No. 99-112; RM-9540

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
President
Mountain West Broadcasting
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 278A to Thermal, California, as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Thermal, California	--	278A

Coordinates: 33-38-42 NL; 116-08-30 WL

Additional Information: The proposed allotment requires no site restriction. As Thermal is not incorporated nor listed in the U.S. Census, the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd, 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd, 10 FCC Rcd 9831 (1995). Petitioner is requested to provide additional information regarding the attributes of Thermal, California, consistent with the above guidelines. Additionally, as Thermal is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government to the proposed allotment of FM Channel 278A at that community will be required.

FCC Contact: Nancy Joyner, (202) 418-2180.

16. MM Docket No. 99-113; RM-9544

Petitioner: Nancy Puopolo

c/o Nancy J. Puopolo
37 Martin St.
Rehoboth, MA 02769-2103

Proposal: Allot Channel 222A to Cimarron, Kansas, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cimarron, Kansas	--	222A

Coordinates: 37-48-41 NL; 100-23-09 WL

Additional Information: The proposed allotment requires a site restriction 3.4 kilometers (2.1 miles) west of the community to avoid a short-spacing to Station KONQ(FM), Channel 220A, Dodge City, Kansas, at coordinates 37-46-33 NL; 100-02-12 WL.

FCC Contact: Nancy Joyner, (202) 418-2180.

17. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

18. Interested parties may file comments on or before May 24, 1999, and reply comments on or before June 8, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

19. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

20. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be

accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 Twelfth Street, SW., Washington, D.C.